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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/375,045

08/16/1999

ZULFICAR MURJI

CAN-117

4515

7590

08/20/2002

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 08/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/375,045	MURJI, ZULFICAR	
	Examiner	Art Unit	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 – 5, 7 – 9, 12, 14 – 16 and 18 – 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Mizutani (US 5,613,960).

With respect to claim 1, Mizutani discloses a sanitary napkin for placement in a crotch portion of an undergarment of a wearer (1), said sanitary napkin having a main body with a longitudinal axis, two opposite longitudinal side areas and a central region intermediate said two opposite side areas (figure 1), said sanitary napkin being characterized by a preferential bending zone on said main body extending obliquely from one longitudinal side area of the sanitary napkin to an opposite longitudinal side area and obliquely crossing the longitudinal axis of the sanitary napkin at said central region as set forth in col. 3, lines 14 – 18 and figure 1.

Regarding claims 3 and 14, Mizutani discloses a plurality of preferential bending zones (50) being spaced apart from one another in figure 1.

With reference to claims 4 and 15, Mizutani discloses a sanitary napkin wherein the preferential bending zones intersect each other as set forth in figure 1.

Regarding claims 5 and 16, Mizutani discloses preferential bending zones that are formed and shaped identical to those claimed by the applicant as taught in col. 3, lines 7 – 18 and figure 1. Therefore, it can be reasonably assumed that the preferential bending zones of Mizutani will yield the same results as the claimed invention including creating resistance to lateral compression when the sanitary napkin is in use.

With reference to claims 7 and 18, Mizutani discloses a sanitary napkin (1) wherein the main body includes a fluid permeable cover layer, an absorbent system and a liquid impervious barrier as set forth in col. 2, lines 18 – 23.

As to claims 8 – 9 and 19 – 20, Mizutani discloses that the preferential bending zone is an embossment on the fluid permeable cover layer and on the absorbent system as set forth in col. 3, lines 7 – 18.

As to claim 12, see the rejection of claim 1.

Claims 1, 3 – 5, 7 – 8, 12, 14 – 16 and 18 – 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Fung et al. (US 5,423,486).

With respect to claim 1, Fung et al. (hereinafter “Fung”) discloses a sanitary napkin for placement in a crotch portion of an undergarment of a wearer, said sanitary napkin having a main body with a longitudinal axis, two opposite longitudinal side areas and a central region intermediate said two opposite side areas, said sanitary napkin being characterized by a preferential bending zone on said main body extending obliquely from one longitudinal side area of the sanitary napkin to an opposite longitudinal side area and obliquely crossing the longitudinal axis of the sanitary napkin at said central region as set forth in col. 4, lines 27 – 42 and figure 7a.

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Regarding claims 3 and 14, Fung discloses a plurality of preferential bending zones being spaced apart from one another in figures 5a and 7a.

With reference to claims 4 and 15, Fung discloses a sanitary napkin wherein the preferential bending zones intersect each other as set forth in figure 7a.

Regarding claims 5 and 16, Fung discloses preferential bending zones that are formed and shaped identical to those claimed by the applicant as taught in col. 4, lines 27 – 42 and figure 7a. Therefore, it can be reasonably assumed that the preferential bending zones of Fung will yield the same results as the claimed invention including creating resistance to lateral compression when the sanitary napkin is in use.

With reference to claims 7 and 18, Fung discloses a sanitary napkin wherein the main body includes a fluid permeable cover layer, an absorbent system and a liquid impervious barrier as set forth in col. 1, lines 58 – 63.

As to claims 8 and 19, Fung discloses that the preferential bending zone is an embossment on the absorbent system as set forth in col. 4, lines 27 – 31.

As to claim 12, see the rejection of claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 2, 6, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizutani (us 5,613,960).

With reference to claims 2 and 13, absent of a critical teaching and/or unexpected result, the examiner contends that the claimed limitations would be an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art invention.

Regarding claims 6 and 17, Mizutani discloses that the embossed pattern can be in the form of curved lines as set forth in col. 3, lines 14 – 18. It would have been obvious to one of ordinary skill in the art to modify the embossed pattern of Mizutani to obtain the desired pattern since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum condition involves only routine skill in the art.

Claims 10 – 11 and 21 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fung et al. (US 5,423,786).

With respect to claims 10 – 11 and 21 – 22, Fung provides the absorbent article with flaps (11, 13) that are fully capable of being used as fasteners as set forth in figures 5a – 7b.

It would have been obvious to one of ordinary skill in the art to use the flaps of Fung as fasteners in order to provide the article with a means for securement to the undergarment of the user thereby preventing accidental leakage and uncontrolled movement of the article.

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Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 – 22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 – 18 of U.S. Patent No. 6,312,416 and over claims 1 and 4 – 19 of U.S. Patent No. 6,440,113.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application, US. Patent No. 6,312,416 and U.S. Patent No. 6,440,113 disclose a sanitary napkin adapted to be worn in a crotch portion of an undergarment comprising a fluid-pervious cover layer, an absorbent system, a liquid-impervious barrier layer, a thickness, and at least one preferential bending zone extending from one longitudinal side area of the sanitary napkin to an opposite longitudinal side area, crossing the longitudinal axis of the sanitary napkin.

Claims 1 – 22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 14 of copending Application No. 09/374,512. This is a provisional obviousness-type double patenting rejection.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application and application no. 09/374,512 disclose a sanitary napkin adapted to be worn in a crotch portion of an undergarment comprising a fluid-pervious cover layer, an absorbent system, a liquid-impervious barrier layer, a thickness, and at least one preferential bending zone extending from one longitudinal side area of the sanitary napkin to an opposite longitudinal side area, crossing the longitudinal axis of the sanitary napkin.

Response to Arguments

Applicant's arguments filed June 12, 2002 have been fully considered but they are not persuasive.

With respect to the applicant's argument that there is no disclosure or suggestion, nor is it inherent that the fused spots between the topsheet and the fibrous sheet will provide a preferential zone to the absorbent article, the examiner disagrees. Claim 1 requires a preferential bending zone on the main body of the sanitary napkin. The specification clearly states on page 20 that the preferential bending zone is formed by embossing. Mizutani discloses a sanitary napkin with fused spots extending obliquely from one longitudinal side area of the sanitary napkin to an opposite

longitudinal side area and obliquely crossing the longitudinal axis of the sanitary napkin in the central region (figure 1). Mizutani also discloses that these fused spots are formed by embossing as set forth in col. 3, liens 14 – 18, thereby providing the main body with a preferential bending zone identical to the preferential bending zone as claimed by the applicant.

In reply to the applicant's argument that Fung does not disclose a preferential bending zone that extends obliquely to the longitudinal side area to an opposite longitudinal side area of the sanitary napkin, the examiner disagrees.

Fung discloses a sanitary napkin with a main body (12) and two side panels (11,13). The examiner contends that the longitudinal side areas of the main body are shown where the side panels are attached to the main body as in figure 7a. The preferential bending zones on the main body (12) therefore extend obliquely from one longitudinal side area of the sanitary napkin to an opposite longitudinal side area and obliquely cross the longitudinal axis of the sanitary napkin as shown in figure 7a when the napkin is in an unfolded position and, more clearly, in figure 7b when the article is in a folded position.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on 703-308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-0858.


Michele Kidwell
August 16, 2002


Aaron J. Lewis
Primary Examiner